

FILED BY CLERK

APR 28 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0037-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
HENRY LEE BAILEY, JR.,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20021106

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Henry L. Bailey

Florence  
In Propria Persona

ECKERSTROM, Judge.

¶1 Pursuant to a plea agreement, petitioner Henry Bailey was convicted of conspiracy to possess a narcotic drug for sale, a class two felony. In June 2004, the trial court suspended the imposition of sentence and placed Bailey on probation for seven

years. In 2007, after Bailey violated the conditions of his probation and admitted doing so, the court revoked his probation and sentenced him to a five-year prison term with credit for 640 days served.

¶2 In January 2011, an unnamed “Writer” filed a writ of habeas corpus on Bailey’s behalf; although Bailey ostensibly signed the document, the author stated, “The Writer comes to [t]he Court for [t]he Petitioner . . . .” In its ruling ordering the pleading stricken, the trial court noted that the unnamed person did not identify himself as an attorney, leaving the court “to assume that the writer is not an attorney licensed to practice in this state.” The court further noted that a non-lawyer may not represent another person. Presumably the same “Writer” then filed a “Notice of Appeal” from the trial court’s ruling striking the previous motion, identifying himself only as “The Writer,” and stating that he “[c]omes” to this court “[f]or and under [t]he direction of [t]he Appellant.” Although not denominated as such, this court has deemed the notice of appeal as a petition for review from the trial court’s denial of a petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 In the petition for review, portions of which are illegible, the “Writer” maintains “[t]he [c]apricious [d]isregard shown by Judge Christopher Browning will not be tolerated a second time by [t]he Writer.” As noted, the trial court struck Bailey’s pleading because it was neither filed by Bailey himself as a *pro per* petition nor by an attorney on his behalf. *See* Ariz. R. Sup. Ct. 31(a), (b) (defining and limiting practice of law to active members of state bar). The court was not necessarily required to strike

Bailey's pleading. But even had the court not done so, the petition did not raise any claims cognizable under Rule 32 or assert a proper claim seeking habeas corpus relief.<sup>1</sup> See Ariz. R. Crim. P. 32.6(c) (requiring summary dismissal when "no . . . claim presents a material issue of fact or law which would entitle the defendant to [post-conviction] relief . . . and . . . no purpose would be served by any further proceedings").

¶4 Despite evidence the petition for review was prepared, at least in part, by a person not authorized to practice law, and even treating this filing as a *pro per* petition, Bailey is not entitled to relief because no claims cognizable under Rule 32 have been raised. To the extent the writer has asserted "New Issues" in the petition for review, we will not consider issues not previously presented to the trial court. See Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review limited to "issues which were decided by the trial court"); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (same).

¶5 For these reasons, we therefore grant the petition for review but deny relief.

/s/ *Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ *Garye L. Vásquez*

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GARYE L. VÁSQUEZ, Presiding Judge

/s/ *Joseph W. Howard*

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JOSEPH W. HOWARD, Chief Judge

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<sup>1</sup>Although a habeas petition may be filed by a "verified person" filing on behalf of the petitioner, see A.R.S. § 13-4122, the pleading filed in the trial court was not actually a habeas petition.